

The 11th October, 1994

No. 14/13/87-6Lab./668.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Haryana Co-op. Sugar Mills, Rohtak *versus* Gurmeet Singh.

IN THE COURT OF SHRI P.L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK.

Reference No. 837 of 1992.

between

SHRI GURMEET SINGH, S/O SHRI KARNAIL SINGH, C/O SHRI SUNDER SINGH, GENERAL SECRETARY, DISTT. C.I.T.U. COMMITTEE, ROHTAK. *Workman*

and

THE MANAGEMENT OF M/S. HARYANA COOP. SUGAR MILLS, ROHTAK

Present :

Shri R.C. Siwach, A.R. for the workman.

Shri M. Kaushal, A.R. for the management.

AWARD

In exercise of powers conferred by Sub Clause (c) of sub Section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute, between the parties, named above, to this Court for adjudication *vide* Labour Department Endstt. No. 43361—66, dated 3rd November, 1987 :—

Whether the termination of services of Shri Gurmeet Singh is justified and in order ? If not, to what relief he is entitled ?

2. The workman and the management were summoned. The workman appeared and filed the claim statement that he was posted in the respondent/management in the year 1981 to 13th February, 1985. The workman had gone number of times after 14th February, 1985 to join the duties and in November, 1985 but not taken on the job. The management was served demand notice by registered post on 3rd January, 1986 to take him on job, but he was not taken in the job. The workman was not given any notice and not paid notice pay, retrenchment compensation etc. under Section 25-F of the I.D. Act, hence the termination is illegal against the principle of natural justice.

3. The written statement filed by the management that respondent is a sugar industry running on co-operative basis and is being run for the welfare of farmers of this area. The nature of the industry is purely seasonal one. Employees are engaged during crushing season and this period of crushing varies according to growth there are certain permanent employees required in the industry whereas there are some employees required regular jobs during the particulars season. The employment of these employees depend upon the variability of work from season to season and they are paid off after the expiry of season and they are engaged on preferential basis as per the work requirement in the coming season, applicant was appointed on temporary basis as per the temporary nature of work during the period of Feb. 1985., the workman resorted to strike in the factory, Conciliation proceedings were pending at Deputy Labour Commissioner, Sonapat Intervened in the affairs of the demand notice. The offer given by the management was not accepted by working force. The applicant proceeded on strike w.o.f. 14th February, 1985 and he was advised to report for duty. The applicant filed a demand notice on 23rd December, 1985 i.e. gap of a nearly one year and the matter was conciliated upon and during the conciliation meeting it was specified by management that his case can be considered for re-employment in the coming season as this season of 1985-86 came to an end at that time he can join duty in the coming season of 1986-87 but the applicant refused to accept the offer. It is a case of self abandonment hence the terms of reference should have been regarding abandonment or regarding the issue of re-employment. This Court can not travel beyond the terms reference to consider that aspect, In this case the contentions of the respondent has not been referred for adjudication hence the terms of the reference made by the Govt. is without jurisdiction not tenable and premature. The applicant never reported for duty on 14th February, 1985 nor ever came in November, 1985 for reporting on duty nor any body refused him employment. The applicant is gainfully employed since he started absents from duty of his own hence the reference be awarded in favour of the respondent and against the applicant holding that applicant is not entitled to any relief either by way of reinstatement or by way of back wages.

4. Replication was filed by the workman. On the pleadings of the parties, the following issues are framed :—

- (1) As per terms of reference?
- (2) Whether the workman abandoned the job? O.P.R.
- (3) Whether the reference is bad in law? O.P.R.
- (4) Whether the workman has been gainfully employed? O.P.R.
- (5) Relief?

5. My findings on the above issues with reasons thereof are as under :—

Issue No. 1 :

6. The workman has examined Shri Daya Kishan, Time-keeper as MW-1, WW-3 Shri Sunder Singh and himself come into witness-box as WW-2 and closed the evidence. The management has examined Shri Suresh Kumar Jain, Clerk and closed the evidence.

7. The submission was made by the learned A.R. for the workman is that the workman worked for more than 240 days in a year and statement of MW-1 has been referred. It is true that the management has accepted that the workman had worked for more than 240 days in a year. The case of the management is that the workman had never refused to workman to come to join the duty. The question is whether the workman has taken the plea that as to when the management accepted the demand notice. The letter Ex. WX-3 is after the demand notice. *Vide* the letter Ex. WX-3 the management had offered the job to the workman and since the management was ready to accept the workman on duty but the workman did not come on duty inspite of asking of the management to join the duty. The reference made by the Government is not tenable and liable to be accepted.

8. The main contention of the learned A.R. for the management that as the management had never disallowed the workman to work and therefore, this reference is bad in law and not maintainable. The reference and the demand notice is pleaded that the workman/applicant had to go to the factory on 14th February, 1985 he was not allowed to resume duty and on asking he was told that he could be later on enrolled on the job.

9. It is true that the management had,—*vide* letter WX-3 from Labour Commissioner, Haryana, Chandigarh to Shri Gurmeet Singh dismissing his demand notice which is dated 26th May, 1987 to the effect that the management in the conciliation meeting on 13th April, 1987 that the respondent is to be taken back the workman on duty. The workman was issued the notice dated 17th April, 1987 and as such his demand notice was consigned to the record room.

10. The reference in question was received this Court on 6th November, 1987 and the demand notice is of the date of 3rd November, 1987. Now the question is whether the management had intimated the workman that they are to employ the workman on the job. Towards that statement of Gurmeet Singh applicant can be referred. He made statement that he is even now ready to join the duty. He was never called for duty after 14th February, 1985 and the management had never written him a letter regarding his absence and he was not given any notice, notice pay and retrenchment compensation. The workman had made statement that he had been going in the office of the respondent on 3rd January, 1986 and he had sent demand notice through registered post to the management, which is Ex. M-1 but his demand notice was dismissed on which he has filed an appeal and which is Ex. WX-2. The management had never offered him job, if had offered him job he would have gone to join the duty. The workman admitted that he is living in Sugar Mills Colony and his father is living therein. He is now plying a Rehri. WW-3 Sunder Singh has made the statement that the applicant had told him on 14th February, 1985 regarding his going on duty but the management had not allowed him to do duty. He also made statement that he had gone to Time Office on 3rd March, 1986 along with the applicant but the Head Time-keeper told him that they would not take then the applicant on the duty and they would take applicant on duty in the next season. He also made statement that the applicant had gone to the respondent in the month of November but he was told that M.D. Sahib has refused to take him on duty. He also made the statement that he worked in the factory upto 12th October, 1981 and he had been going to the factory as union leader.

11. MW-1 Suresh Kumar, Clerk has come to witness-box and made statement that the applicant had never come to join the duty after strike on 14th February, 1985 and letter Ex. WX-3 was issued but even

then the applicant never come to join the duty. He admitted that letter Ex. WX-3 was never sent to the applicant but it was affixed on notice board in the Mill. He also admitted that letter Ex. MX-2 was never sent to the applicant. He also admitted that any letter was not sent to the applicant to come to join the duty after 14th February, 1985. He could not tell whether the applicant was seasonal worker or whole time worker. He also admitted the sign. of Shri Ram Dhari on letter Ex. WX. He also could not tell whether the applicant had come to the factory after issuing of letter Ex. WX-3. It is also not entered in the office record whether the workman had come to join the duty or not.

12. From the evidence so discussed above it is true that the letter Ex. WX-3 was sent to the workman but it is not proved it had reached in the hand of the applicant or not, it is not reached in the hands of the applicant. The workman had come to know regarding the issuance of such letter to him. MW-1 has made statement there is nothing on the record as to whether the applicant had come to factory or on after 14th February, 1985 or not. It is proved from the statement of the workman and from the statement of Sunder Singh as WW-3 that the workman had been going to factory to join the duty but he was not allowed to resume his duty. The question regarding relation of the presence of the workman, is concerned. I am of view that he has not going on the merits of the case. I am to see whether reference made by the workman is tenable or not. Whether workman himself did not go to join the duty or the management is not allowing him to resume his duty. In the evidence so discussed above I am of the view that the workman was always ready to join the duty but the management has not allowed to resume the duty and hence I hold that the reference petition is maintainable and I decide this issue in favour of the workman and against the management.

Issue No. 2 :

I have already come to the conclusion while discussing Issue No. 1 that the workman had never abandoned the job and as such I decide this issue against the management.

Issue No. 3 :

14. This issue is not pressed or argued, hence I decide this issue against management.

Issue No. 4 :

15. The workman has admitted that he is plying the Rehri but it is not proved that what income he gets from Rehri. It is true that some time any worker might have been getting some income from plying Rehri. Since there is no evidence on the record as to how much amount he is getting plying a Rehri but the workman plying a Rehri, I am of the view that the workman has not been gainfully employed and I decide this issue against the management.

Issue No. 5 (Relief) :

16. In view of my findings on the above issues I accept the reference petition and hold that the workman is entitled to the job and I direct the management to reinstate him on the job from 14th February, 1985 but he is entitled to 20% (TWENTY) of back wages. The parties are left to bear their own costs. The reference is answered and returned accordingly.

The 5th September, 1994.

P. L. KHANDUJA,
Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

Endst. No. Ref. 831-93/2315, dated the 15th September, 1994.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh.

P. L. KHANDUJA,
Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.